

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**DAVINA HURT, et al.,**

Plaintiff,

v.

**COMMERCE ENERGY, INC., et al.,**

Defendants.

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Case No. 1:12-CV-00758

Judge James S. Gwin

**JOINT STIPULATION REGARDING SATISFACTION OF JUDGMENT, PAYMENTS  
TO CLASS MEMBERS AND AWARD OF SUPPLEMENTAL ATTORNEYS' FEES AND  
COSTS**

Defendants Just Energy Group, Inc., Just Energy Marketing Corporation and Commerce Energy, Inc. ("Defendants" or "Just Energy"), and Plaintiffs Davina Hurt and Dominic Hill, on behalf of themselves and those similarly situated ("Plaintiffs") (collectively, "the Parties"), through their counsel, hereby give notice of their joint stipulation regarding satisfaction of the judgment entry of this court (ECF No. 960) as detailed below.<sup>1</sup> In addition, the Parties hereby stipulate to an award of supplemental attorneys' fees and costs, as provided below, for fees incurred for legal work by Plaintiffs' counsel including work related to the appeal of this case to the United States Court of Appeals for the Sixth Circuit and for fees incurred in connection with the Defendants' Petition for Writ of Certiorari to the United States Supreme Court.

1. Satisfaction of Judgment Entry – Attorneys' Fees and Costs

In its September 28, 2018 order of judgment, this court approved an award of attorneys'

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<sup>1</sup> On October 13, 2020, the parties stipulated to a stay of enforcement of the judgment pending Defendants' Petition for Writ of Certiorari to the United States Supreme Court (ECF No. 975). On June 7, 2021, the Supreme Court denied Defendants' Petition. Thereafter, the parties stipulated to the terms of satisfaction of the judgment entry and an award of supplemental fees to Plaintiffs' counsel as outlined herein.

fees to Plaintiffs' counsel in the amount of \$2,718,440.75 and an additional amount of \$217,120.16 in costs, for a total award of \$2,935,560.91 to Plaintiffs' counsel. In addition, the court awarded a combined total of \$62,500 as incentive payments to the two named plaintiffs and 21 other class members, to be paid from the award to Plaintiffs' counsel, leaving a total of \$2,873,060.91, plus interest, to be paid to Plaintiffs' counsel.

On that total, the parties calculated interest owed on the fee and cost award through July 7, 2021 in the amount of \$212,857.03. Accordingly, on July 7, 2021, Defendants wired to lead Plaintiffs' counsel, Dworken & Bernstein, the total amount of \$3,085,917.94, representing payment in full of the September 28, 2018 award for attorneys' fees and costs, plus post-judgment interest from the date of the judgment entry. The parties hereby stipulate that this portion of the judgment has been satisfied.

## 2. Awards to Plaintiffs

In its September 28, 2018 entry, the court also awarded a total of \$1,889,156.12 to the eligible plaintiffs as reflected on ECF No. 935-2. Including the \$62,500 incentive payments, the total payable to class members is \$1,951,656.12, plus interest. The parties have calculated post-judgment interest through July 23, 2021 to be \$146,588.53. Accordingly, the Defendants are preparing to pay a total of \$2,098,588.53 to the class members listed on ECF 935-2. Payments shall be by check and mailed via U.S. postal service by July 23, 2021. Payments of back wage awards will be made by payroll checks, less applicable withholdings and deductions, and those payments representing the wage portion of the individual awards shall be reflected on IRS W-2 forms for tax year 2021. For those plaintiffs who opted in to the FLSA portion of the case and are eligible to receive liquidated damages awards, Defendants will make those payments by separate checks and IRS 1099 forms will be issued to reflect those payments. The parties will notify the

Court once these payments are issued, and will keep the Court apprised of any class members who are unable to be located or who do not cash their payment.

3. Stipulation Regarding Award of Supplemental Attorneys' Fees and Request for Approval

On October 13, 2020, when the parties stipulated to stay the enforcement of the Sixth Circuit's mandate and this court's judgment (ECF No. 975) pending Defendants' petition to the U.S. Supreme Court, Defendants also agreed to supplement the supersedeas bond ordered by this court on November 5, 2018 (ECF No. 966). Specifically, the Defendants increased the bond by \$350,000, for a total of \$5,600,000.00 (ECF No. 976). After the payments described above, which total \$5,184,506.47, the balance of the bond amount totals \$415,493.53.

Subject to this court's approval, the parties have negotiated, and Plaintiffs' counsel has agreed to accept the amount of \$415,493.53 (the balance of the bond) as payment in full of its supplemental fees and costs.

Plaintiffs submit this fee award is reasonable and should be approved for the following reasons:

As recognized by this Court previously (ECF No. 959), fees and costs to the prevailing party are provided for pursuant to 29 U.S.C. § 216(b) and R.C. § 4111.10(A) for wage and hour violations of federal and Ohio law.

This agreed payment of supplemental fees is *in addition to* the full payment of the judgment plus statutory interest. See Affidavit of Nicole Fiorelli, at ¶ 5, attached hereto as Exhibit A. As such, class members are receiving 100% of the amounts they were awarded by the Court, and the payment of these supplemental attorney's fees will not reduce the class members' payments in any way. *Id.*

The stipulated amount of supplemental attorneys' fees is reasonable in light of Plaintiffs'

counsel's actual costs and lodestar (attorney's reasonable hourly rates multiplied by the number of hours reasonably spent on the case) incurred after July 12, 2018<sup>2</sup>, which for Plaintiff's counsel Dworken & Bernstein alone<sup>3</sup> exceeds \$500,000. *Id.* at ¶ 8. To calculate the lodestar for the supplemental fees, Plaintiffs' counsel used the hourly rates that were previously approved by this Court in its prior order awarding fees and costs. ECF No. 959; Fiorelli Affid. at ¶ 8. The time billed was all reasonably necessary to properly represent the class members' interests and secure a favorable resolution during the appeal. *Id.* This included time spent on matters such as: successfully opposing Defendants' motion for reconsideration, which asked this Court to grant Defendants judgment as a matter of law (*see* ECF Nos. 940, 946); drafting the reply brief in support of the original motion for fees and costs; moving to quash Defendants' related subpoenas; briefing incentive compensation payments for certain Plaintiffs; and preparing for and attending the hearing on fees (*see* ECF Nos. 941, 945, 949, 951, 955, 957, 958, 959, 960); opposing Defendant's request to stay proceedings and securing an increased appellate bond amount (ECF Nos. 962, 966); defending the appeal in the Sixth Circuit, including appellate briefing; responding to supplemental authority by Defendants and reviewing Defendants' *en banc* request; negotiating an increased bond amount and various stipulations in light of Defendants' certiorari petition (*see* ECF No. 975); assisting with response to Defendants' petition to certiorari in the United States Supreme Court; addressing issues related to Defendants' various bankruptcy filings; and class member communication. *See* Fiorelli Affid. at ¶¶ 6-7.

For these reasons, Defendants also stipulate to this amount as reasonable and the parties jointly request the Court's approval of the supplemental fee award.

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<sup>2</sup> The original fee award was based on fees incurred through July 12, 2018. *See* ECF No. 936-2.

<sup>3</sup> Dworken & Bernstein employed counsel to oppose Defendants' Certiorari Petition in the Supreme Court.

/s/Nicole T. Fiorelli

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Attorneys for Defendants

**IT IS SO ORDERED.**

DATED: July 20, 2021

s/ James S. Gwin

Hon. James S. Gwin  
United States District Court Judge